

STATE OF MINNESOTA

IN SUPREME COURT

C4-94-1646

ORDER FOR HEARING TO CONSIDER PROPOSED  
AMENDMENTS TO THE SPECIAL RULES OF PROCEDURE GOVERNING  
PROCEDURES UNDER THE MINNESOTA COMMITMENT ACT

IT IS HEREBY ORDERED that a hearing be held before this Court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on May 26, 1999 at 1:30 p.m., to consider the recommendations of the Civil Commitment Rules Committee to amend the Special Rules Of Procedure Governing Procedures Under The Minnesota Commitment Act. A copy of the committee's report containing the proposed changes is annexed to this order.

IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 12 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Constitution Avenue, St. Paul, Minnesota 55155, on or before May 21, 1999, and
2. All persons desiring to make an oral presentation at the hearing shall file 12 copies of the material to be so presented with the Clerk of the Appellate Courts together with 12 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before May 21, 1999.

Dated: March 11, 1999

BY THE COURT:

OFFICE OF  
APPELLATE COURTS

MAR 11 1999

**FILED**

  
Kathleen A. Blatz  
Chief Justice

STATE OF MINNESOTA

IN SUPREME COURT

C4-94-1646

In re Special Rules of Procedure Governing Procedures under the Minnesota  
Commitment Act

Recommendations of the Minnesota Supreme Court

Civil Commitment Rules Committee

Final Report

February 23, 1999

Hon. Casey J. Christian, Owatonna, Chair

Janice Allen, Anoka  
Hon. James Finley, St. Paul  
Melanie Ford, Duluth  
Beverly Jones Heydinger, Minneapolis  
Bonnie Lee, St. Paul

Steven Kufus, St. Paul  
Hon. Herbert Lefler, Minneapolis  
Carolyn Peterson, Minneapolis  
Pat Siebert, Minneapolis  
Thomas Bennett Wilson, III, Edina

Colleen Brady, Minneapolis

CIVIL COMMITMENT RULES COMMITTEE  
Summary of Committee Recommendations

The Civil Commitment Rules Committee was appointed by the Supreme Court in October, 1997, and directed to make changes to the Special Rules of Procedure to reflect the changes in the Minnesota Commitment Act.

The Committee has drafted the rules of procedure to afford sufficient due process and to assure that necessary treatment is not unduly delayed. The Committee's proposal attempts to balance the rights of the patient and the need for swift action in Commitment proceedings. These rules are intended as a complete recodification of the existing rules, which should be repealed upon the enactment of the committee's proposed rules.

**Effective Date**

The committee is submitting the rules to the court in February with the expectation that the court make them effective, after any necessary public hearing or notice and comment period, on either July 1, 1999, or January 1, 2000. The committee does not believe these amendments require significant "lead time" between adoption and effective date.

**Areas of Special Concern**

There are two proposed rules which the committee believes should be called to your attention.

The first concern is Proposed Rule #4 dealing with consecutive hold orders. The comment explains the concern.

The second concern is Proposed Rule #13 entitled Medical Records. The Statute provides that certain designated persons are entitled to review "relevant" and/or "pertinent" medical records of the Respondent. The only person in the loop who can determine relevancy is the Court. The time frames make court review impossible. The

rule has been drafted to provide the designated person with access to all medical records subject to a protective provision that the records may not be disclosed to third persons unless the Respondent consents or by Court order.

A sub-committee consisting of Referee James Finley, Ramsey County; Thomas Wilson, Wilson Law Office, Edina; Janice Allen, Anoka County and myself will be available to meet with you and answer questions as they arise.

Respectively submitted,

Casey J. Christian, Chairperson  
MINNESOTA SUPREME COURT CIVIL  
COMMITMENT RULES COMMITTEE

**SPECIAL RULES OF PROCEDURE GOVERNING PROCEEDINGS  
UNDER THE MINNESOTA COMMITMENT AND TREATMENT ACT**

## RULE 1 - GENERAL

- (a) **Scope.** The Special Rules shall apply in proceedings under the 1997 Minnesota Commitment and Treatment Act, Minnesota Statutes Ch. 253B and its amendments.
- (b) **Rules Superseded.** The Special Rules shall supersede any other body of rules otherwise applicable (e.g., the Rules of Civil Procedure for the District Courts, Probate Court Rules, etc.) in conflict with these Special Rules.
- (c) **Citation.** These Special Rules may be cited as Commitment and Treatment Act Rules.

### **Advisory Comment - - 1999**

The Act, as codified under Minnesota Statutes Ch. 253B, is detailed and the practitioner must be familiar with both the Act and these rules.

## RULE 2 – COMPUTATION OF TIME

Except as provided by these Special Rules, the Minnesota Rules of Civil Procedure govern the computation of any time periods prescribed by Minnesota Statutes Ch. 253B. If a respondent is represented by an attorney, whenever an act is required within a certain time after a written demand or service of a document upon a party or entity other than the court, time shall begin to run once both the party and the parties' attorneys have received notice of the document, regardless of the method of service, and shall not include weekends and holidays. The 72-hour absence that triggers missing respondent procedures under Minn. Stat. § 253B.141, subd. 1, commences when the respondent was due to return to the facility and includes weekends and holidays.

### **Advisory Committee Comment - -1999**

These rules contemplate that service may be effected personally, by mail, or by fax. There are instances in the statute when a notice or a report does not need to be "given" to an attorney. The rule ensures that the attorneys know the basis of any hearing scheduled by the court upon receipt of a filed document. When a party requests a hearing after notice that the treatment center or designated agency intends to take some action (as in the case of revocation of provisional discharge), this rule expands the period of time if the notice was mailed to the attorneys. If the notice was faxed, the time to request the hearing is not expanded.

### **RULE 3 – SERVICE**

Whenever a person is required to give or serve any document under this chapter to any party, attorney, or entity other than the court, service may be made in any manner allowed under the Minnesota Rules of Civil Procedure. Attorneys for both parties must also be served whether or not service upon counsel is specifically required by statute.

#### **Advisory Committee Comment - - 1999**

*See comment to Rule 11.*

### **RULE 4 – CONSECUTIVE HOLD ORDERS PROHIBITED**

A person held under a 72-hour emergency hold must be released by the facility within 72 hours unless a court order to hold the person is obtained. A petition for commitment need not have been filed in order to obtain a court-ordered hold. A consecutive hold order not issued by the district court is expressly prohibited, whether or not issued by the same physician or other authority.

#### **Advisory Committee Comment - - 1999**

Minn. Stat. § 253B.07, subd. 2b, allows for an *ex parte* application to the court for an apprehension and hold order whether or not a petition for commitment has been filed with the court. The committee recommends that there be very limited use of the *ex parte* request for judicial hold without a simultaneous filing of a commitment petition. The committee recognizes, however, that due to weather, changes in a respondent's conduct, communication difficulties, or plain error,

there may be an occasional situation where the commitment petition cannot be filed during the 72-hour hold and outright release may endanger a respondent's or other person's safety. The respondent retains the right to request release. *See* Minn. Stat. § 253B.05, subd. 3b.

#### **RULE 5 – CASE CAPTIONS**

Civil commitment proceedings shall be captioned in the name of the person subject to the petition as follows: *In the Matter of the Civil Commitment of: (Full Name of Respondent), Respondent.*

#### **Advisory Committee Comment - - 1999**

A person subject to commitment proceedings is referred to as the respondent throughout these rules. The court and counsel shall be sensitive to the correct pronunciation of a respondent's name.

#### **RULE 6 - COMMENCEMENT**

A proceeding for commitment or early intervention is commenced upon filing a petition with the District Court pursuant to Minnesota Statutes Ch. 253B.01-.23.

The petition should be filed in the county of financial responsibility as defined in Minn. Stat. § 253B.045, subd. 2. If the county of financial responsibility refuses to file a petition, the county where the respondent is present must file the petition if statutory conditions for commitment are present. Financial responsibility for the costs of the proceedings and treatment will be resolved by subsequent administrative process.

#### **Advisory Committee Comment - - 1999**

The committee has attempted to address concerns where conflicts occur between the county of financial responsibility (respondent's residence) and the county where respondent is present, regarding who shall file the petitions, and to provide guidance in light of short statutory time constraints. The committee did not intend to remove discretion from the county attorney in the county where the respondent is present. If statutory conditions are present for commitment and the county attorney in the county where the respondent is present determines that a commitment is necessary and reasonable for the protection of the respondent or others, then the petition must be filed. Ultimate financial responsibility will be resolved in accordance with Minn. Stat. § 256G.01-.12.

*See also* Minn. Stat. § 253B.07, subd. 2a, when dealing with a person subject to Minn. R. Crim. P. 20.01 or 20.02. It is not the intent of the committee to affect venue when the person is subject to a proceeding governed by Minn. R. Crim. P. 20.01 or 20.02 or Minn. R. Juv. Del. P. 20.01 or 20.02.

A petition for commitment as a sexual psychopathic personality or a sexually dangerous person may also be filed in a county where a related criminal conviction was entered. *See* Minn. Stat. § 253B.185, subd. 1.

## **RULE 7 – PETITIONS**

A petition filed pursuant to Minn. R. Crim. P. 20.01 or Minn. R. Juv. Del. P. 20.01 is sufficient if it contains a judicial determination that the defendant is incompetent to stand trial or be sentenced for the offense. A petition filed pursuant to Minn. R. Crim. P. 20.02 or Minn. R. Juv. Del. P. 20.02 is sufficient if it contains a judicial determination that the defendant was found not guilty, by reason of mental illness or mental deficiency, of the crime with which the defendant was charged.

### **Advisory Committee Comment - - 1999**

This rule clarifies that petitions pursuant to Minn. R. Crim. P. 20 or Minn. R. Juv. Del. P. 20 need not include all of the specific requirements of the law relating to petitions for judicial commitment, which arise from referrals to the pre-petition screening team. For example, an examiner's statement in support of commitment is not required, since the basis of the petition is a judicial determination.

## **RULE 8 – SUMMONS**

Once a petition has been filed, the court shall issue a summons to be personally served upon the respondent. The summons shall direct the respondent to appear at the times and places stated in the summons for psychiatric, psychological, and medical examination and court hearing. The summons shall state in bold print that an order to apprehend and hold the respondent may be issued if the respondent does not appear as directed. The court need not issue a summons if the respondent is already under a medical or judicial hold.

The court shall direct that a copy of the pre-petition screening report, the petition, and the examiner's supporting statement be personally served upon the respondent with the summons if issued, and that a copy be distributed to the parties' attorneys and any other person identified in Minnesota Statutes Ch. 253B.

#### **RULE 9 – APPOINTMENT AND ROLE OF COUNSEL**

Immediately upon the filing of a petition for commitment or early intervention the court shall appoint a qualified attorney to represent the respondent at public expense at any subsequent proceeding under this chapter. The attorney shall represent the respondent until the court dismisses the petition or the commitment and discharges the attorney.

The respondent may employ private counsel at the respondent's expense. If private counsel is employed, the court shall discharge the appointed attorney.

In order to withdraw, counsel must file a motion and obtain the court's approval.

Counsel for the respondent is not required to file an appeal or commence any proceeding under Minnesota Statutes Ch. 253B if, in the opinion of counsel, there is an insufficient basis for proceeding.

#### **RULE 10 – ATTORNEY-CLIENT PRIVILEGE**

The content of attorney-client communications by telephone, mail, or conference at the facility, shall not be monitored, censored, or made part of a respondent's medical record.

The facility may open and inspect, but not read, a letter or package, and must do so in the respondent's presence.

### **RULE 11 – EXAMINER’S LIST**

The court administrator shall prepare and maintain a list of examiners. A statement of the manner and rate of compensation of examiners shall be attached to the list. Examiners shall be paid at a rate of compensation fixed by the court. If a party seeks appointment of an examiner not on the list, or at a rate of compensation exceeding that fixed by the court, the party shall seek approval of the court prior to appointment.

### **RULE 12 – EXAMINER REPORTS**

Each court-appointed examiner shall examine the respondent and prepare a separate report stating the examiner’s opinion and the facts upon which the opinion is based. The report shall address:

- (a) Whether the respondent is mentally ill, mentally retarded, chemically dependent, mentally ill and dangerous to the public, a sexually dangerous person, or a sexual psychopathic personality;
- (b) Whether the examiner recommends commitment;
- (c) The appropriate form, location, and conditions of treatment, including likelihood of the need for treatment with neuroleptic medication;
- (d) The respondent’s capacity to make decisions about neuroleptic medication, if needed; and
- (e) If the petition alleges that the respondent is mentally ill and dangerous to the public, whether there is a substantial likelihood that respondent will engage in acts capable of inflicting serious physical harm on another.

- (f) If the petition alleges that the respondent is a sexual psychopathic personality and/or a sexually dangerous person, the report shall address each element set out in Minn. Stat. § 253B.02, subd. 18b and 18c respectively, including an opinion as to the likelihood that the respondent will engage in future dangerous behavior.

The court shall send a copy of the examiner's report to the petitioner's attorney, the respondent and respondent's attorney immediately upon receiving the report.

### **RULE 13 – MEDICAL RECORDS**

The county attorney, respondent, respondent's attorney, court-appointed examiner, guardian ad litem, substitute decision-maker, and their agents and experts retained by them shall have access to all of the respondent's medical records and the reports of the court-appointed examiners. The records and reports may not be disclosed to any other person without court authorization or the respondent's signed consent. Except for a preliminary hearing, each party shall disclose to the other party or parties at least 24 hours in advance of the hearing which of the respondent's medical records the party intends to introduce at hearing.

### **RULE 14 – LOCATION OF HEARING, RULES OF DECORUM, ALTERNATIVE METHODS OF PRESENTING EVIDENCE**

The judge or judicial officer shall assure the decorum and orderliness of any hearing held pursuant to Minnesota Statutes Ch. 253B. The judge or judicial officer shall afford to respondent an opportunity to be dressed in conformity with the dignity of court appearances.

A hearing may be conducted or an attorney for a party, a party, or a witness may appear by telephone, audiovisual, or other electronic means if the party intending to use electronic means notifies the other party or parties at least 24 hours in advance of the hearing and the court approves. If a witness will be testifying electronically, the notice must include the name, address, and telephone number where the witness may be reached in advance of the hearing. This rule does not supersede Minn. Stat. § 595.02- §595.08 (competency and privilege). The court shall insure that the respondent has adequate opportunity to speak privately with counsel.

#### **RULE 15 – EVIDENCE**

The Court shall admit all relevant, reliable evidence, including but not limited to the respondent's medical records, without requiring foundation witnesses.

#### **RULE 16 – RIGHTS OF PATIENTS**

In every order for commitment, the committing court shall order that the Rights of Patients, provided at Minn. Stat. § 253B.03, be incorporated in the order by reference.

#### **RULE 17 – PETITION TO DETERMINE NEED FOR CONTINUED CARE**

Upon the filing of a petition to determine the need for continued care pursuant to Minn. Stat. § 253B.17, the court shall cause the hearing to be held within 14 days of filing. The hearing may be continued for up to 30 days upon showing of good cause. The court shall give the respondent, respondent's attorney, county attorney, guardian ad

litem, and substitute decision-maker, as well as such other interested persons as the court may direct, at least 10 days notice of the date and time of the hearing.

### **RULE 18 - RECOMMITMENT**

For recommitments pursuant to Minn. Stat. § 253B.13, the court shall append the immediately preceding commitment file to the file on the new petition.

### **RULE 19 – TERMINATION OF EARLY INTERVENTION**

Any petition for involuntary commitment filed at the termination of court-ordered early intervention under Minn. Stat. § 253B.065 shall be treated as an initial commitment petition and not a recommitment.

### **RULE 20 – TERMINATION OF COMMITMENT**

The court shall order termination of the commitment when the commitment expires, or upon a direct discharge by the treatment facility, or upon a discharge by the Commissioner of Human Services.

The order shall also discharge the court-appointed attorney.

#### **Advisory Committee Comment - - 1999**

Minn. Stat. § 253B.12, subd. 1(e), provides for an order terminating the commitment if a 60-90 day report is not timely filed or if the report describes the respondent as not in need of further institutional care and treatment. There is no similar provision for terminating the commitment if the report required by Minn. Stat. § 253B.16 is not filed or if there is a final discharge under Minn. Stat. § 253B.16 or if a provisional discharge expires under Minn. Stat. § 253B.15, subd. 9. This rule insures a formal termination of the proceeding and discharge of the respondent's court-appointed attorney.

## **RULE 21 – PUBLIC ACCESS TO RECORDS**

- (a) Except as provided in these Special Rules, and as limited by court order, all court files relating to civil commitment shall be available to the public for inspection, copying, or release.
- (b) The court administrator shall create a separate section or file in which the pre-petition screening report, court appointed examiner's report, and all medical records shall be filed. Records in that section or file shall not be disclosed to the public except by express order of the district court. This provision shall not limit the parties' ability to mention the contents of the pre-petition screening report, court appointed examiner's report and medical records in the course of proceedings under Minnesota Statutes Ch. 253B.

## **RULE 22 – STAYED ORDERS (MENTALLY ILL AND DANGEROUS TO THE PUBLIC, SEXUALLY DANGEROUS PERSONS, AND SEXUAL PSYCHOPATHIC PERSONALITIES)**

Stayed orders for commitment as mentally ill and dangerous to the public, sexually dangerous person, or a sexual psychopathic personality may be issued only by agreement of the parties and approval by the court.

**RULE 23 – EVALUATION AND FINAL HEARINGS IN CASES**

**GOVERNED BY MINN. STAT. § 253B.18 AND MINN. STAT. § 253B.185**

- (a) For persons who have been committed as mentally ill and dangerous to the public, sexually dangerous persons, or as sexual psychopathic personalities, the head of the treatment facility shall file the report required by Minn. Stat. § 253B.18. The evaluation may be conducted at a secure treatment facility or at a correctional facility. If transport is needed, the court shall designate the agency responsible to do it.
- (b) Prior to making the final determination with regard to a person initially committed as mentally ill and dangerous to the public, as a sexually dangerous person, or as a sexual psychopathic personality, the court shall hold a hearing. The head of the treatment facility shall file the report required by Minnesota Statute Section 253B, Subd.2. The hearing for final determination shall be held within 14 days of the court's receipt of the report from the head of the treatment facility or within 90 days of the date of initial commitment, whichever is earlier, unless continued by agreement of the parties, or by the court for good cause shown. As its final determination, the court may, subject to Minn. R. Crim. P 20.01, subd. 4:
- (1) Discharge the respondent's commitment;
  - (2) Commit the respondent as mentally ill only, in which case the respondent's commitment shall be deemed to have commenced upon the date of initial commitment, for purposes of determining the maximum length of the determinate commitment; or

- (3) Commit the respondent for an indeterminate period as mentally ill and dangerous to the public, as a sexually dangerous person, or as a sexual psychopathic personality.
- (c) At the request of respondent, the court shall appoint an examiner of the respondent's choice for purposes of the hearing required by this rule.
  - (d) The written report of the head of the treatment facility pursuant to Minn. Stat. § 253B.18, subd. 2, shall address the criteria for commitment and whether there has been any change in the respondent's condition since the commitment hearing. The report shall provide the following information:
    - (1) the respondent's diagnosis;
    - (2) the respondent's present condition and behavior;
    - (3) the facts, if any, that establish that the respondent continues to satisfy the statutory requirements for commitment;
    - (4) a description of treatment efforts and response to treatment by the respondent during hospitalization;
    - (5) the respondent's prognosis;
    - (6) the respondent's individual treatment plan;
    - (7) an opinion as to whether the respondent is in need of further care and treatment;
    - (8) an opinion as to the program or facility best able to provide further care and treatment, if needed;
    - (9) an opinion as to whether respondent is dangerous to the public or himself.

All supportive data and documentation shall be attached to the report.

- (e) At the hearing, the court shall consider all competent evidence relevant to the respondent's present need for continued commitment. The burden of proof at the hearing is upon the proponent of indeterminate commitment to establish by clear and convincing evidence that the statutory requirements for commitment under Minnesota Statutes Ch. 253B continue to be met.

**Advisory Committee Comment - - 1999**

This rule is intended to require final resolution of the commitment process of a respondent who is mentally ill and dangerous to the public, a sexually dangerous person, or a sexual psychopathic personality with all due diligence. An initial hearing should not be "reviewed" years later. The rule is not intended to dictate where a committed person should be confined. If a commitment is sustained upon review and the individual is still subject to commitment to the Commissioner of Corrections the balance of the sentence is to be served in a correctional institution.

# FAX Transmission Sheet

**Minnesota Disability Law Center  
Mental Health Law Project  
FAX Number: 612-334-5755**

**430 First Avenue North  
Minneapolis, MN 55401-1780  
Phone: 612-332-1441, ext.234**

**Date:** May 25, 1999  
**From:** Patricia M. Siebert  
**To:** Frederick Grittner  
**Company:** 305 Judicial Center  
**Voice:** 651-297-5529  
**Fax:** 651-297-4149  
**Subject:** Proposed Civil Commitment Rules, C4-94-1696;  
hearing on Wednesday, May 26,1999.

**You should receive 3 page(s) including this cover sheet.**

**If you do not receive all pages, please call 612-332-1441, ext.234.**

## **COMMENTS:**

**I am unable to attend tomorrow's hearing. Please accept the enclosed letter as written testimony, or if that is not possible, as written comments to the proposed rules. Thank you.**

The information contained in this facsimile transmission is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone, and return the original message to us at the address indicated above via the U.S. Postal Service. We will reimburse you for your mailing expenses. Thank you.

**CLIENT ASSISTANCE PROJECT**  
**LEGAL ADVOCACY FOR PERSONS WITH DEVELOPMENTAL DISABILITIES**  
**MENTAL HEALTH LAW PROJECT**  
**PROTECTION AND ADVOCACY FOR INDIVIDUAL RIGHTS**  
**EXECUTIVE DIRECTOR**  
 Jeremy Lane  
**LEGAL DIRECTOR**  
 Pamela S. Hoopes  
**ADMINISTRATOR**  
 Lisa Cohen

**MINNESOTA DISABILITY LAW CENTER**

**THE PROTECTION & ADVOCACY SYSTEM FOR MINNESOTA**  
 430 FIRST AVENUE NORTH, SUITE 300  
 MINNEAPOLIS, MN 55401-1780  
 (612) 332-1441  
 (TDD) 332-4668  
 Toll Free 1-800-292-4150  
 FAX (612) 334-5755

**OFFICE OF APPELLATE COURTS**

**SUPERVISING ATTORNEY**  
Roderick J. Macpherson III

**ATTORNEYS**  
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 Luther Grunquet  
 Kathleen Hagen  
 Anne L. Henry  
 Kathy S. Komoff  
 Anne M. Robertson  
 Barnett J. Roanfield  
 Patricia M. Siebert

**ADVOCATES**  
 Linda Bonney (Grand Rapids)  
 Kuzman Dubbels (Fergus Falls)  
 Bonita Kallstad (Willmar)  
 Sandra M. Moore (Duluth)  
 Rochelle Roehrich (Minneapolis)  
 Sharon Sanders (Duluth)  
 Marilyn Spensley (Park Rapids)

MAY 25 1999

May 25, 1999

**FILED**

The Honorable Casey J. Christian  
 Judge of District Court  
 Third Judicial District  
 Steele County Courthouse  
 Owatonna, MN 55060

*(By Fax)*

**RE: Proposed Civil Commitment Rules, C4-94-1696**

Dear Judge Christian:

I am unable to attend the hearing for the proposed civil commitment rules, so would like to submit this brief written testimony, if that is permissible. If it is not possible to submit written testimony, perhaps this letter could be included as comments to the proposed rules.

Proposed Rule 14 permits the parties, their attorneys or witnesses to appear by telephone, audiovisual, or other electronic means, with 24-hour notice and the court's permission. While I think respondents will benefit by the flexibility of electronically available witnesses, I agree with Judge Dennis Murphy that the respondent's attorney should appear with the respondent at all hearings. It would be deleterious to the respondent and to the court process if the respondent is placed in the vulnerable position of having to deal personally with the judge and the County Attorney without benefit of the presence of his or her own advocate, even if that person is otherwise available by phone.

Secondly, like the Hennepin County Attorney's Office, I believe the admission of evidence without requiring foundation witnesses, as proposed in Rule 15, should be limited to admission of reliable medical records of the respondent. My recollection from serving on the rules committee is that this was the purpose of the proposed rule.

**The Honorable Casey J. Christian**  
**May 25, 1999**  
**Page 2**

**Thank you for the opportunity to submit my comments on the proposed rules, and to serve on the committee.**

**Very truly yours,**

**MINNESOTA DISABILITY LAW CENTER**



**Patricia M. Siebert**  
**Attorney at Law**

**cc: Fred Grittner, Clerk of the Appellate Courts (by fax)**

AMY KLOBUCHAR  
COUNTY ATTORNEY



(612) 348-5550

OFFICE OF THE HENNEPIN COUNTY ATTORNEY  
C-2000 GOVERNMENT CENTER  
MINNEAPOLIS, MINNESOTA 55487

OFFICE OF  
APPELLATE COURTS

May 10, 1999

MAY 12 1999

Frederick Grittner  
Clerk of the Appellate Courts  
305 Judicial Center  
25 Constitution Avenue  
St. Paul, Minnesota 55155

C4-94-1646

**FILED**

Re: Proposed Amendments to the Special Rules for Civil Commitment

Dear Mr. Grittner:

I am writing regarding the proposed Rules for Civil Commitment. My supervisor Coleen Brady, who attended meetings during my medical leave, and I, participated in the committee's deliberations for the Hennepin County Attorney's Office. We wish to thank the Appellate Court for that opportunity. The Summary of the Committee's Recommendations indicated that there were two areas of concern that required the Court's attention. I wish to address the concerns we voiced during the committee's deliberations in both of those areas.

Our concerns arise out of a 1980 federal lawsuit, *Vickerman, et. al., v. Hennepin County Probate Court*. The suit alleged due process violations, and was settled by consent decree. The settlement was intended to provide respondents in commitment proceedings with an adequate opportunity to contest commitment. It was also the basis for a number of provisions enacted in the 1982 Civil Commitment Act, which are still in force. Minn. Stat. § 253B.08, for example, currently provides that the evidence submitted at trial conforms to the rules of evidence, and that parties are able to cross-examine witnesses, particularly experts. Court examiners cannot submit their reports in absentia, unless agreed by the parties.

We believe that the proposed Rules 4 and 15 create the potential for the sort of proceedings the consent decree, and the Commitment Act, was intended to prevent. Rule 4 prohibits consecutive 72-hour holds by physicians, but permits the court to order a hold without the filing of a petition. As we understand the statute, the court acquires jurisdiction

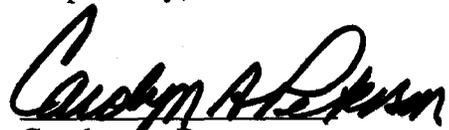
either through a person's present commitment status, or the filing of a commitment petition. The wording of proposed Rule 4 appears to permit the court to order a hold without establishing jurisdiction. We are aware that other committee members have a different interpretation of proposed Rule 4 and the statutory language on holds in Minn. Stat. § 253B.05, subd. 3. We would direct the Court to them for their comments.

Our second area of concern is proposed Rule 15, which permits the admission of any evidence without foundation. We understand that the proposal intends to eliminate foundation for medical records when their foundation is not at issue. However, we believe the wording of proposed Rule 15 is overly broad, and does not permit any of the parties to adequately test the evidence being offered. We would support a modification of the proposed Rule that would permit the admission of records without foundation where they are relevant and reliable.

A community hospital brought the third and last potential problem to our attention. Rule 13 specifies that the county attorney, rather than "petitioner's attorney" shall have access to records. This language does not address situations where county attorneys do not represent treatment providers such as community hospitals or the Department of Human Services. This would include requests to administer medical treatment in Minn. Stat. § 253B.03, subd. 6, or requests to administer neuroleptics. It may also impact parties involved in special review board and judicial appeal panel cases pursuant to Minn. Stat. § 253B.18 and § 253B.19. We would support correcting this inadvertent oversight in Rule 13 by substituting the language "petitioner's attorney" for "county attorney".

Please feel free to contact me with any questions that arise as a result of our comments. Once again, thank you for your consideration.

Respectfully,



Carolyn A. Peterson  
Assistant Hennepin County Attorney  
PH: (612) 348-9818  
Fax: (612) 348-6430

STATE OF MINNESOTA  
FOURTH JUDICIAL DISTRICT COURT



PATRICIA L. BELOIS  
JUDGE  
HENNEPIN COUNTY GOVERNMENT CENTER  
MINNEAPOLIS, MINNESOTA 55487  
(612) 348-3534  
FAX (612) 348-2131

May 21, 1999

Mr. Frederick Grittner  
Clerk of the Appellate Courts  
305 Minnesota Judicial Center  
25 Constitution Avenue  
Saint Paul, Minnesota 55155

OFFICE OF  
APPELLATE COURTS  
MAY 21 1999

FILED

In re: Proposed Amendments to the Special Rules of Procedure  
Governing Procedures under the Minnesota Commitment Act

Dear Mr. Grittner:

Enclosed are twelve copies of the written statement that is the comment of the undersigned judges and referees of the Fourth Judicial District concerning the proposed amendments to the special rules of procedure governing procedures under the Minnesota Commitment Act. We offer this statement with the utmost of respect for the work done to create amendments to the rules by our colleague Judge Casey J. Christian and the members of the committee charged with the important work of improving the rules pursuant to which civil commitment is accomplished.

Our written statement consists of three sections, comments concerning proposed Rules 4, 8, and 15.

We will not ask to make an oral presentation at the hearing scheduled May 26, 1999, however, any one of us would be pleased to discuss these positions in greater detail if the Supreme Court would find our additional input helpful to its consideration of the proposed amendments.

Respectfully yours,

Handwritten signature of Patricia L. Belois in cursive.

Patricia L. Belois  
Judge of District Court  
Presiding Judge,  
Probate/Mental Health Division  
(1987-89, 1998-present)

Handwritten signature of Richard M. Wolfson in cursive.

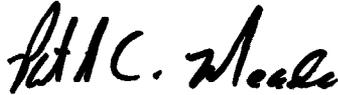
Richard M. Wolfson  
Referee of District Court  
Probate/Mental Health Division  
(1978-present)  
(612) 348-3187



Bruce Kruger  
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Anthony Schumacher  
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Patrick C. Meade  
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Probate/Mental Health Division  
(1988-present)  
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Marilyn Justman  
Judge of District Court  
Presiding Judge, Mental Health Division  
(1992-1994)  
(612) 348-8224



Ann L. Alton  
Judge of District Court  
Presiding Judge, Probate-Mental Health Division  
(1995-1997)  
(612) 348-8105

WRITTEN STATEMENTS CONCERNING PROPOSED AMENDMENTS TO THE OFFICE OF  
SPECIAL RULES OF PROCEDURE GOVERNING PROCEDURES UNDER THE APPELLATE COURTS  
MINNESOTA COMMITMENT ACT

MAY 21 1999

PREPARED BY CURRENT AND PAST JUDGES AND REFEREES OF THE FOURTH  
JUDICIAL DISTRICT ASSIGNED WHO HAVE BEEN ASSIGNED TO THE  
DISTRICT'S MENTAL HEALTH DIVISION

**FILED**

**RULE 4 – Consecutive Hold Orders Prohibited**

**A person under a 72-hour emergency hold must be released by the facility within 72 hours unless a court order to hold the person is obtained. *A petition for commitment need not have been filed in order to obtain a court-ordered hold.* A consecutive hold order not issued by the district court is expressly prohibited, whether or not issued by the same physician or other authority. (Emphasis added.)**

**1. The Minnesota statute does not support the italicized sentence.**

a. **The statute is at best ambiguous.** The comment to this proposed rule bases this sentence on M.S. §253B.07, Subd. 2b. A close reading of that statute finds only ambiguous support for this rationale. The subdivision provides three bases for a hold: (1) a petitioner showing that serious, imminent, physical harm is likely without the hold; (2) failure of the proposed patient to appear at a scheduled event; or (3) following an emergency hold and a “request” for a commitment petition. The first and second cases clearly require a petition. The third case is at best ambiguous. It might be read to support a hold order when there has been an application for a petition filed with either the prepetition screening team, §253B.07, Subd. 1(a), or with the office of the county attorney, Id. At Subd. 1(e). Alternatively, it might be read to require an emergency hold and the filing of a petition for commitment. This interpretation is consistent with the language of §253B.05, Subd. 3 (a) providing that a §253B.07, Subd. 2b hold order may issue following an emergency hold and the filing of a petition for commitment. It has the further advantage of insuring the existence of a prepetition screening report before the hold order issues.

The risks inherent in this rule require a much clearer statutory basis. Even if it were possible to interpret M.S. §253B.07, Subd. 2b in a way supporting the proposed rule, a very much clearer statement of the legislature’s intent should be required before such an interpretation should be embraced.

b. **The italicized sentence exceeds even the ambiguous statute.** Note that the proposed rule goes much further than either interpretation. Not even a request for a petition is required. It simply allows ex parte hold orders. There is no statutory basis for those orders without some additional action by the party requesting the order.

2. **The rule is subject to abuse.** Nothing in the proposed rule limits the use of these orders. The comment recommends limited use of the procedure but there is no inherent safeguard. In the ordinary course of such ex parte matters there are built-in safeguards. See, e.g., Rule 65 of the Rules of Civil Procedure. However, proposed Rule 4 does not require an affidavit, motion, or any supporting documentation. It is foreseeable that authorized health or peace officers may prefer to distance liability by seeking an ex parte order instead of acting on their own authority. In addition to the possible abuse of state power, this carries the potential for a large increase in the cost of the hospital care the courts will be asked to assume.

### **RULE 8 - Summons**

**Part of Proposed Rule 8 violates the Minnesota statutes.** The last sentence of proposed Rule 8 provides:

The court shall direct that a copy of the prepetition screening report, the petition, and the examiner's supporting statement be personally served upon the respondent with the summons if issued, and that a copy be distributed to the parties' attorneys *and any other person identified in Minnesota Statutes Ch. 253B.* (Emphasis added.)

Disseminating the prepetition screening report and the examiner's supporting statement to anyone but the respondent and his agents or attorney violates the commitment statute. The data collected by the prepetition screening team is classified as private data on individuals. M.S. §253B.07, Subd. 1(b).

To the extent that the examiner's statement in support of the petition is a medical record it, too, should not be broadly disseminated without the authorization of the court or the consent of the respondent. Proposed Rule 13 provides a list of persons who may see the medical records and reports of court-appointed examiners and notes that no others may see these documents without either court authorization or the consent of the respondent.

The commitment statute does not require distribution of these items to anyone not listed. M.S. §§253B.07, Subd. 4(b) and 253B.08, Subd. 2.

### **RULE 15 - Evidence**

**The court shall admit all relevant, reliable evidence, including but not limited to respondent's medical records, without requiring foundation witnesses.**

1. **The Rule violates the Rules of Evidence.**

A witness is competent if he or she (a) has personal knowledge of the facts or (b) is an expert testifying about a matter within the area of expertise. Rules 602 and 703. Whether a witness is competent is a matter for the court to decide according to the law. Rules 103 and 601. Preliminary questions allow the court to make this determination. See, e.g., Shumaker, J., Practical Evidence (May 15, 1997) See also the definition of "foundation" in Black's Law Dictionary (5<sup>th</sup> ed. 1979) ("Preliminary questions to witness to establish admissibility of evidence").

"Foundation," is undefined in the rules of Evidence. Its meaning is the common sense one of "basis." M.S. §645.08. See Random House Dictionary of the English Language (1968). "Foundation" allows the basis for the evidence to be established, enabling the court to determine whether the witness or documentary evidence is competent. Thus the comment to Rule 702 notes that the court must determine whether the expert is "sufficiently qualified" to provide opinion testimony. To allow testimony or documentary evidence without establishing its basis places the court in an untenable position and will promote litigation.

**2. The Rule violates the Minnesota Statutes.**

The Minnesota commitment act of 1982 provides that the rules of evidence are applicable. M.S. §253B.08, Subd. 7, M.S. §253B.09, Subd. 1. A rule erasing the requirement that witnesses and documentary evidence be competent violates this statute.

DISTRICT COURT OF MINNESOTA  
NINTH JUDICIAL DISTRICT

HONORABLE DENNIS J. MURPHY  
CHIEF JUDGE



Pennington County Courthouse  
1st Street and Main Avenue  
P.O. Box 366  
Thief River Falls, Minnesota 56701-0366  
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April 19, 1999

OFFICE OF  
APPELLATE COURTS

APR 22 1999

FILED

Frederick Grittner  
Minnesota Supreme Court  
Clerk of Appellate Courts  
305 Judicial Center  
25 Constitution Avenue  
St. Paul, MN 55155

Re: Proposed Amendments to the Special Rules of Procedures Under  
the Minnesota Commitment Act 24-94-1646

Dear Chief Justice and Justice of Minnesota Supreme Court:

In reviewing the rules, I have some concerns of Rule 14. The Rule is fine as far as it goes, but I believe that there should be added that the respondent's attorney must be located with the respondent at any hearing no matter how the evidence is permitted. I believe fairness in due process requires the attorney for the respondent to be personally with the respondent.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dennis J. Murphy".

Dennis J. Murphy  
Chief Judge, Ninth Judicial District